

# Notice of Allowability

Application No.

10/776,559

Examiner

Kamal A. Saeed

Applicant(s)

FYFE ET AL.

Art Unit

1626

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to communication filed on 2/15/07.
2. ☒ The allowed claim(s) is/are 1, 2, 5-7 and 10-21 now renumbered as 1-17.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

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### ***DETAILED ACTION***

Claims 3, 4, 8 and 9 have been canceled. Therefore, claims 1, 2, 5-7 and 10-21 are currently pending in this application. Claims 16-19, are withdrawn from further consideration by the Examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

### **Response to Amendment and Remarks**

In an Amendment filed on February 15, 2007, Applicant's canceled claims, 4, 8 and 9 and have amended claims 1, 10 and 14 to remove non-elected subject matter from the claims. Therefore, the objection to the claims as set forth in the previous office action is hereby withdrawn.

### **Rejoinder**

Applicants' election, with traverse, of Group I, currently amended, drawn to compounds of Formula I, Since the product claims were found allowable, in accordance with 37 C.F.R. 1.104 and In re Ochiai, 71 F.3d 1565, 37 USPQ 1127 (Fed. Cir. 1995), the product claims, process of making thereof, and method of use claims have been rejoined. Therefore, the previous restriction requirement is hereby withdrawn.

### **Examiner's Amendment**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

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Authorization for this examiner's amendment was given in a telephone interview with James B Myers on 04/21/2007.

The application has been amended as follows:

**Amendments to Specification**

Insert the following in the first paragraph of the specification:

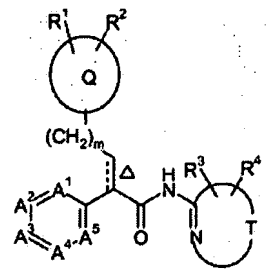
----This application claims the benefit of U.S. Provisional Application Serial No. 60/446,682 filed February 11, 2003 and U.S. Provisional Application Serial No. 60/512,826 filed October 20, 2003:-----

**Amendments to Claims**

In claim 16, line 1, **delete** "of prophylactic or therapeutic"

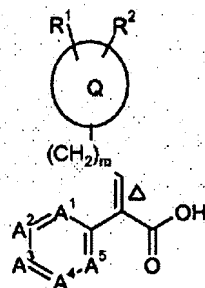
**Reasons for Allowance**

The present invention is directed to compounds of Formula

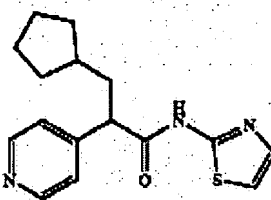


wherein Q is a C<sub>3</sub>-C<sub>8</sub>cycloalkyl group and the rest of the variables are as defined in claim 1. The

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claims are also directed to compounds of Formula 1 wherein the variables are as defined in claim 1. The closest prior art is U.S. Patent No. 6,911,545 B2 to Corbett et al. The



prior art teach compounds of Formula 2. This compound is excluded from the compounds of this application by proviso. None of the published compounds anticipated, or rendered obvious, the compounds claimed in this application. Therefore, claims 39-42, 44-47 and 49-51, 53, 56, 57 and 59 are allowable.

Any comments considered necessary by applicant must be submitted no later than the payment issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement for Reasons for Allowance."

### **Telephone Inquiry**

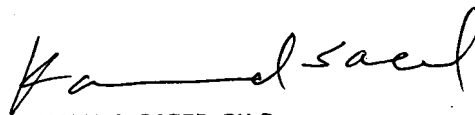
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamal A Saeed whose telephone number is (571) 272-0705. The examiner can normally be reached on M-T 7:00 AM- 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

Communication via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or public PAIR only. For more information about the pair system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197.



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PRIMARY EXAMINER